



City of Huntington Beach Planning and Building Department

STAFF REPORT

TO: Planning Commission
FROM: Scott Hess, AICP, Director of Planning & Building
BY: Jill Arabe, Assistant Planner *JA*
DATE: June 28, 2011
SUBJECT: SIX-MONTH REVIEW OF CONDITIONAL USE PERMIT NO. 09-001 (DIGG'S RESTAURANT & BAR)
**APPLICANT/
BUSINESS**
OWNER: Philip Chung, Digg's Restaurant & Bar, 8052 Adams Avenue, Huntington Beach, CA 92646
PROPERTY
OWNER: Henry Chung, 434 W. Summerfield Circle, Anaheim, CA 92802
LOCATION: 8052 Adams Avenue, 92646 (southeast corner of Beach Blvd. and Adams Ave.)

STATEMENT OF ISSUE:

This item represents a six-month review of Conditional Use Permit (CUP) No. 09-001, approved by the Planning Commission on June 23, 2009. The previous applicant (Sandbox Sports Grill), for whom the CUP was originally granted, vacated the subject property prior to completion of all conditions of approval. Within 12 months of the approval of CUP No. 09-001, the current applicant (Digg's Restaurant & Bar) applied for a certificate of occupancy, requesting transfer of the existing entitlement. The transfer was granted through an acceptance of conditions agreement and the certificate of occupancy was issued in November 2010. The six-month review is required as a condition of approval by the Planning Commission of CUP 09-001. The purpose of the review is to verify compliance with the conditions of approval and assess any potential impacts of the approved use.

- ◆ Staff's Recommendation: Receive and file as adequate and complete the six-month review of Conditional Use Permit No. 09-001 based upon the following:
 - Minimal complaints to Police and Code Enforcement
 - Noise incidents are isolated and infrequent
 - No violations related to dancing and valet parking which were not approved by the CUP
 - In compliance with conditions of CUP with exceptions
 - A 12-month review is scheduled for follow up inspections and monitoring

RECOMMENDATION:

Motion to:

"Receive and file as adequate and complete the six-month review of Conditional Use Permit No. 09-001."

ALTERNATIVE ACTION(S):

The Planning Commission may take alternative actions such as:

- A. "Direct staff to schedule a public hearing to adopt modified conditions of approval of Conditional Use Permit No. 09-001."
- B. "Direct staff to schedule a revocation hearing of Conditional Use Permit No. 09-001."
- C. "Continue the six-month review of Conditional Use Permit No. 09-001 and direct staff accordingly."

Public Notification:

Legal notice was published in the Huntington Beach/Fountain Valley Independent on June 16, 2011 and notices were sent to tenants and property owners of record within a 500 ft. radius of the subject property, individuals/organizations requesting notification (Planning Division's Notification Matrix), applicant, and interested parties. As of June 21, 2011, no communication supporting or opposing the request has been received.

ANALYSIS:

Conditional Use Permit No. 09-001 permitted the establishment of alcohol service within a 1,110 sq. ft. outdoor dining area of an existing 5,539 sq. ft. restaurant at 8052 Adams Avenue. The six-month review considered code enforcement complaints, Police Department calls for service and on-site inspections, and was completed by Police, Planning, and Code Enforcement staff. To date, Code Enforcement has received one complaint for noise emanating from the live entertainment/dj in the restaurant on Sunday nights. No further complaints have been received.

At the request of Planning staff, Police and Code Enforcement have performed inspections on the property to check compliance with all conditions and code requirements. The following violations have been reported:

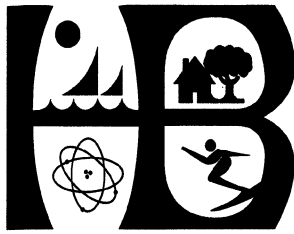
| Staff | Date | Time | Permit | Violation |
|------------------|----------------|----------|---------------------------------|--|
| Police | March 19, 2011 | 9:41 PM | Entertainment Permit | Condition #13, on-site security guards not in possession of valid CA Guard Card |
| Police | April 2, 2011 | 10:05 PM | Entertainment Permit/CUP 09-001 | Condition #12, no security guards present /Condition #2e, no security guard on duty to monitor parking, trash, and noise |
| Police | May 29, 2011 | 1:20 AM | Municipal Code | Section 5.44.015(A), excessive noise in excess of 100 ft. |
| | | | CUP 09-001 | Condition #2e, no security guard on duty to monitor parking, trash, and noise |
| | | | ABC license | Condition #2, service or alcohol consumption on patio after 12 AM |
| Code Enforcement | June 4, 2011 | 11:45 PM | CUP 09-001 | Condition #2c, doors left open during business hours |

Furthermore, staff has been made aware of potential violations of the ABC license and Entertainment Permit for promoting drink specials on the restaurant's website (Attachment No. 10).

At this time, staff's recommendation is to receive and file the six-month review as adequate and complete. Based on the minimal amount of complaints to Police and Code Enforcement, the business does not present a nuisance to the neighborhood. The reported noise incidents are isolated and infrequent. No violations related to dancing and valet parking which have not been approved have been reported on the premises. A 12-month review is required pursuant to Condition No. 3 of CUP No. 09-001 which will include follow up inspections. With the exceptions of the referenced violations associated with the business operation, the applicant is in compliance with all of the other conditions of the subject CUP. The applicant has been cautioned of the consequences as a result of this six-month review and staff will continue to monitor the business. The 12-month review should provide adequate time for the applicant to correct the reported violations and operate a business in full compliance with approved permits.

ATTACHMENTS:

1. Planning Commission Notice of Action dated June 24, 2009 (CUP No. 09-001)
2. Planning Commission Notice of Action dated May 6, 1994 (CUP No. 94-9)
3. Entertainment Permit for Digg's Restaurant issued December 9, 2010
4. Alcoholic Beverage Control (ABC) License for Digg's Restaurant
5. Police Department Citation Letter dated May 5, 2011
6. Police Department Citation Letter dated May 10, 2011
7. Police Department Violation Summary dated June 5, 2011
8. Code Enforcement Division Memorandum dated June 7, 2011
9. Police Department Memorandum dated June 3, 2011
10. Referenced website posts received and dated June 14, 2011



Huntington Beach Planning Commission

2000 MAIN STREET

CALIFORNIA 92648

NOTICE OF ACTION

June 24, 2009

Scott Natvig, Architect
12528 Gilmore Avenue
Los Angeles, CA 90066

SUBJECT: CONDITIONAL USE PERMIT NO. 09-001 (SANDBOX SPORTS GRILL)

APPLICANT: Scott Natvig, Architect

REQUEST: To permit the establishment of 1) a 150 sq. ft. indoor area for dancing, 2) alcohol service within a 1,110 sq. ft. outdoor dining area, and 3) valet service for an existing 5,539 sq. ft. sports bar restaurant

**PROPERTY
OWNER:**

Antonio Orlando, 8052 Adams Avenue, Huntington Beach, CA, 92646

LOCATION: 8052 Adams Avenue, 92646 (southeast corner of Beach Blvd. and Adams Avenue)

**DATE OF
ACTION:**

June 23, 2009

On Tuesday, June 23, 2009, the Huntington Beach Planning Commission took action on your application, and your application was **conditionally approved**. Attached to this letter are the findings and conditions of approval.

Please be advised that the Planning Commission reviews the conceptual plan as a basic request for entitlement of the use applied for and there may be additional requirements prior to commencement of the project. It is recommended that you immediately pursue completion of the conditions of approval and address all requirements of the Huntington Beach Zoning and Subdivision Ordinance in order to expedite the processing/completion of your total application. The conceptual plan should not be construed as a precise plan, reflecting conformance to all Zoning and Subdivision Ordinance requirements.

Under the provisions of the Huntington Beach Zoning and Subdivision Ordinance, the action taken by the Planning Commission becomes final at the expiration of the appeal period. A person desiring to appeal the decision shall file a written notice of appeal to the City Clerk within ten (10) calendar days of the date of the Planning Commission's action. The notice of appeal shall include the name and address of the appellant, the decision being appealed, and the grounds for the appeal. Said appeal must be accompanied by a filing fee of One Thousand, Five Hundred Forty-One Dollars (\$1,541.00) if the appeal is filed by a single family dwelling property owner appealing the decision on his own property and Two Thousand Three Hundred

Notice of Action: CUP 09-001
June 24, 2009
Page 2

Seventy-Nine Dollars (\$2,379.00) if the appeal is filed by any other party. In your case, the last day for filing an appeal and paying the filing fee is July 6, 2009 at 5:00 PM.

Provisions of the Huntington Beach Zoning and Subdivision Ordinance are such that any application becomes null and void one (1) year after final approval, unless actual construction has started.

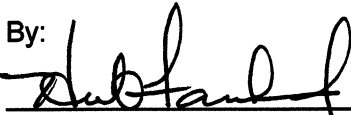
"Excepting those actions commenced pursuant the California Environmental Quality Act, you are hereby notified that you have 90 days to protest the imposition of the fees described in this Notice of Action. If you fail to file a written protest regarding any of the fees contained in this Notice, you will be legally barred from later challenging such action pursuant to Government Code §66020."

If you have any questions, please contact Jill Arabe, the project planner, at jarabe@surfcity-hb.org or (714) 374-5357 or the Planning Department Zoning Counter at (714) 536-5271.

Sincerely,

Scott Hess, Secretary
Planning Commission

By:



Herb Fauland, Planning Manager

SH:HF:JA:lw

Attachment: Findings and Conditions of Approval – CUP No. 09-001

c: Honorable Mayor and City Council
Chair and Planning Commission
Fred Wilson, City Administrator
Scott Hess, Director of Planning
Bill Reardon, Division Chief/Fire Marshal
Leonie Mulvihill, Senior Deputy City Attorney
Steve Bogart, Senior Civil Engineer
Gerald Caraig, Permit-Plan Check Manager
Property Owner
Project File

ATTACHMENT NO. 1.2

ATTACHMENT NO. 1

FINDINGS AND CONDITIONS OF APPROVAL

CONDITIONAL USE PERMIT NO. 09-001

FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to section 15301 of the CEQA Guidelines, because the project involves negligible or no expansion of the existing restaurant use.

FINDINGS FOR APPROVAL – CONDITIONAL USE PERMIT NO. 2009-001:

1. Conditional Use Permit No. 2009-001 for the establishment, maintenance and operation of alcohol service and consumption within an existing outdoor dining patio of an existing restaurant will not be detrimental to the general welfare of persons working or residing in the vicinity or detrimental to the value of the property and improvements in the neighborhood. The existing outdoor dining area is located north of the subject restaurant and oriented towards arterial streets, so potential noise do not impact residential uses to the south and east of the commercial center. Alcohol service will be in conjunction with food service, such that the restaurant use will be consistent both within the exterior of the northwest patio and within the interior of the building. The project will be modified to remove the 150 sq. ft. dance floor and valet plan because these additional requests may cause detrimental impacts related to noise and traffic. The restaurant will remain as an eating and drinking establishment.
2. The conditional use permit will be compatible with surrounding uses because nearby residential uses are buffered from the existing outdoor dining area by buildings and parking lots. Noise generated by the outdoor dining patrons will be consistent with a restaurant use. Outdoor dining patrons may only be served and consume alcohol in conjunction with food service, such that the restaurant use remains unaltered. Vehicular traffic and noise will be similar to other eating and drinking establishments within close proximity to residential uses. The outdoor dining patio is surrounded by minimum five (5) foot high screen walls and building walls to restrict access to and from the area and to minimize noise spreading to residential uses.
3. The granting of the conditional use permit, as modified by conditions of approval, will not adversely affect the General Plan. It is consistent with the following goals and policies of the General Plan:

A. Land Use Element

Policy LU 10.1.6 Require that commercial projects abutting residential properties adequately protect the residential use from the excessive or incompatible impacts of noise, light, vehicular, traffic, visual character, and operational hazards.

Policy LU 10.1.8 Require that entertainment, drinking establishments, and other similar uses provide adequate physical and safety measures to prevent negative impacts on adjacent properties.

The subject site operates with alcohol service and live entertainment, which are ancillary to the restaurant use. The proposed alcohol service and consumption within the existing outdoor dining area is compatible with the restaurant use and neighboring commercial uses. The expansion of the alcohol menu to the existing outdoor area does not increase the intensity of the permitted use. As suggested by condition of approval, the alcohol service and consumption will be in conjunction with food service. The outdoor dining patio is located along the north and west exterior of the building towards the arterial streets. It is surrounded by the building and minimum five (5)-foot high screen walls. The residential uses are buffered from the patio area by commercial buildings, parking lots, and perimeter walls. Also, the restaurant is the furthest building from nearby residential properties, which offers adequate relief. The restaurant will operate with conditions placed on the Entertainment Permit issued by the Police Department.

B. Noise Element

Objective N 1.4 Minimize noise spillover or encroachment from commercial and industrial land uses into adjoining residential neighborhoods or "noise sensitive" uses.

The expansion of alcohol service and consumption in conjunction with food service will not increase the existing conditions generated by patrons utilizing the outdoor dining area. The outdoor patio is located towards the arterial streets and further away from residents. Vehicular traffic along the arterial streets absorbs noise generated by the outdoor dining patrons. The outdoor patio located southeast of the building will not be utilized by patrons as modified by a condition of approval.

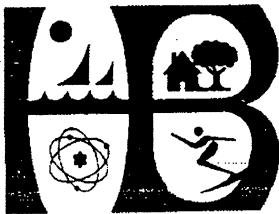
CONDITIONS OF APPROVAL – CONDITIONAL USE PERMIT NO. 09-001:

1. The site plan, floor plan, and elevation received and dated May 4, 2009, shall be the conceptually approved design with the following modifications:
 - a. The 150 sq. ft. dance floor shall be removed.
 - b. The proposed valet parking plan shall be removed.
 - c. The proposed (2) parking spaces south of the subject building shall be removed.
2. The use shall comply with the following:
 - a. Dancing shall be prohibited (PD).
 - b. Valet service shall not be permitted until such time a revised valet plan is submitted to the Planning Department for review and approval by the Planning Commission.
 - c. Doors shall remain closed during hours of operation.
 - d. Alcoholic beverages may only be served and consumed in conjunction with food service within the 1,110 sq. ft. outdoor dining patio along the north and west side of the building. The area shall be monitored for compliance by Code Enforcement and the Police Department.

- e. A security guard shall be on duty to monitor parking, trash, and noise from 7pm until a minimum one-half hour after closing.
 - f. Patrons will not be permitted in the patio areas along the south and east sides of the business. (PD)
 - g. Food from the regular restaurant menu must be available from opening until one-half hour prior to the scheduled closing time. (PD)
 - h. The use shall conform with all conditions of the Entertainment Permit as approved by the Police Department.
 - i. All previous conditions of approval per Conditional Use Permit No. 94-9 shall apply.
3. A review of the use shall be conducted by the Planning Commission with public hearing within (6) months and (12) months of Conditional Use Permit No. 09-001 approval to verify compliance with all conditions of approval and applicable Chapters of the Huntington Beach Zoning and Subdivision Ordinance. At that time the Planning Commission may consider modifications to the conditions of approval.
 4. The Planning Commission reserves the right to amend the conditions or revoke Conditional Use Permit No. 09-001 if any violation of these conditions of the Huntington Beach Municipal or HBZSO occurs.
 5. The Development Services Departments (Building & Safety, Fire, Planning, and Public Works) shall be responsible for ensuring compliance with all applicable code requirements and conditions of approval. The Director of Planning may approve minor amendments to plans and/or conditions of approval as appropriate based on changed circumstances, new information or other relevant factors. Any proposed plan/project revisions shall be called out on the plan sets submitted for building permits. Permits shall not be issued until the Development Services Departments have reviewed and approved the proposed changes for conformance with the intent of the Planning Commission's action. If the proposed changes are of a substantial nature, an amendment to the original entitlement reviewed by the Planning Commission may be required pursuant to the provisions of HBZSO Section 241.18.
 6. Incorporating sustainable or "green" building practices into the design of the proposed structures and associated site improvements is highly encouraged. Sustainable building practices may include (but are not limited to) those recommended by the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) Program certification (<http://www.usgbc.org/DisplayPage.aspx?CategoryID=19>) or Build It Green's Green Building Guidelines and Rating Systems (<http://www.builditgreen.org/index.cfm?fuseaction=guidelines>).

INDEMNIFICATION AND HOLD HARMLESS CONDITION:

The owner of the property which is the subject of this project and the project applicant if different from the property owner, and each of their heirs, successors and assigns, shall defend, indemnify and hold harmless the City of Huntington Beach and its agents, officers, and employees from any claim, action or proceedings, liability cost, including attorney's fees and costs against the City or its agents, officers or employees, to attack, set aside, void or annul any approval of the City, including but not limited to any approval granted by the City Council, Planning Commission, or Design Review Board concerning this project. The City shall promptly notify the applicant of any claim, action or proceeding and should cooperate fully in the defense thereof.



Huntington Beach Planning Commission

P.O. BOX 190

CALIFORNIA 92648

May 6, 1994

Restaurant Kikuya
Mr. Wayne Chin
8052 Adams Avenue
Huntington Beach, CA 92646

SUBJECT: CONDITIONAL USE PERMIT NO. 94-9

REQUEST: To permit live entertainment at the Restaurant Kikuya pursuant to Section 9220.12 of the Huntington Beach Ordinance Code.

LOCATION: 8052 Adams Avenue

DATE OF
ACTION: May 3, 1994

FINDINGS FOR APPROVAL - CONDITIONAL USE PERMIT NO. 94-9:

1. The establishment and operation of live entertainment will not be detrimental to the general welfare of persons working or residing in the vicinity, nor be detrimental to property values and improvements in the area. With the conditions imposed, the proposed live entertainment use will not adversely impact the surrounding residential and commercial properties.
2. The granting of Conditional Use Permit No. 94-9 will not adversely affect the General Plan of the City of Huntington Beach. The proposed live entertainment use is consistent with the General Plan land use designation and zoning for the location.
3. The access to and parking for the proposed live entertainment use does not create an undue traffic problem; there is adequate on-site parking to accommodate restaurant patrons.

CONDITIONS OF APPROVAL - CONDITIONAL USE PERMIT NO. 94-9:

1. The site plan and floor plans dated July 28, 1993 shall be the conceptually approved layout.
 2. The use shall conform with all conditions of the Entertainment Permit as approved by the Police Department.
- (pccl007-18)

ATTACHMENT NO. 2.1

3. A security guard to monitor the exterior of building, including the parking area, shall be present during live jazz performances.
4. A review of the use shall be conducted within six (6) months of the live entertainment operation to verify compliance with all conditions of approval and applicable Articles of the Huntington Beach Municipal and Ordinance Codes. A public hearing may be held should, at any time, there be violations of these conditions or code sections to the extent that such a hearing is deemed necessary by the Police Department or Community Development (Code Enforcement) Department.
5. The Planning Commission reserves the right to amend the conditions or revoke Conditional Use Permit No. 94-9 if any violation of these conditions of the Huntington Beach Municipal or Ordinance Code occurs.
6. This conditional use permit shall not become effective for any purpose until an "Acceptance of Conditions" form has been properly executed by the applicant and an authorized representative of the owner of the property, recorded with County Recorder's Office, and returned to the Planning Division; and until the ten (10) day appeal period has elapsed.
7. Conditional Use Permit No. 94-9 shall become null and void unless exercised within one (1) year of the date of final approval, or such extension of time as may be granted by the Planning Commission pursuant to a written request submitted to the Planning Division a minimum 30 days prior to the expiration date.

CODE REQUIREMENTS:

1. All applicable Public Works fees shall be paid.
2. Service roads and fire lands, as determined by the Fire Department, shall be posted and marked. Fire access lanes shall be maintained. If fire lane violations occur and the services of the Fire Department are required the applicant will be liable for expenses incurred.
3. The applicant shall meet all applicable local, State and Federal Fire Codes, Ordinances and standards.
4. The development shall comply with all applicable provisions of the Ordinance code, Building Division, and Fire Department.
5. No sweeping or clean-up of the parking lot shall be permitted between 10:00 PM and 7:00 AM.
6. Dancing will not be permitted unless an application is made for such use and approved.

Conditional Use Permit No. 94-9
Page Three

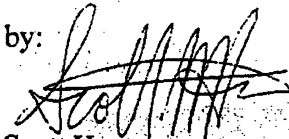
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HUNTINGTON BEACH, CA 92648

I hereby certify the Conditional Use Permit No. 94-9 was approved by the Planning Commission of the City of Huntington Beach on May 3, 1994 upon the foregoing findings and conditions. This approval represents conceptual approval only; detailed plans must be submitted for review and the aforementioned conditions completed prior to final approval.

Sincerely,

Howard Zelefsky, Secretary
Planning Commission

by:



Scott Hess
Senior Planner



CITY OF HUNTINGTON BEACH

2000 MAIN STREET
P. O. BOX 70

POLICE DEPARTMENT

CALIFORNIA 92648

Tel: (714) 960-8811

KENNETH W. SMALL
Chief of Police

ENTERTAINMENT PERMIT

THE PERMITTED LOCATION SHALL OPERATE IN COMPLIANCE WITH THE BELOW LISTED CONDITIONS AND SECTION 5.44 OF THE HUNTINGTON BEACH MUNICIPAL CODE AT ALL TIMES.
THIS PERMIT IS NON-TRANSFERABLE.

Issued to: DIGGS Restaurant & Bar
8052 Adams Ave.
Huntington Beach, CA 92648

Effective Dates: November 1, 2010 – October 31, 2011


CONDITIONS (15 total):

1. Hours of Entertainment:

| | |
|--------------------------|----------------------|
| Monday through Thursday: | 11:00 AM to 10:00 PM |
| Friday and Saturday: | 11:00 AM to 1:30 AM |
| Sunday: | 11:00 AM to 9:00 PM |
2. All entertainment must cease no less than 30 minutes prior to the posted or scheduled closing time, and no later than the time authorized by this permit.
3. Types of Entertainment: Amplified and non-amplified music, entertainment is limited to a disc jockey, live bands, recorded music and karaoke.
4. Dancing is not allowed by anyone.
5. No games or contests requiring or involving the consumption of alcoholic beverages shall be permitted.
6. Food service from the regular menu must be available to patrons up to thirty (30) minutes before the scheduled closing time.
7. No cover charge or admission fee will be allowed.
8. There shall be no requirement for patrons to purchase a minimum number of alcoholic drinks.
9. No "happy hour" type of reduced price alcoholic beverage promotions shall be allowed after 7:00 p.m. each day of the week.
10. All exterior doors and windows shall be closed during times of entertainment.
11. All live entertainment must remain inside the establishment at all times.
12. Security Guards: At least two when entertainment is present. One guard shall be designated to monitor the parking lot from 7:00 p.m. until one half hour after closing when entertainment is present.
13. All security guards must be clearly identifiable as security guards and possess a valid California Guard Card.
14. The licensee or any representatives of the licensee may not pay a promoter for services based upon occupancy or attendance to an event.
15. All owners, employees, representatives, and agents must obey all state, local, and municipal laws, and conditions of the Conditional Use Permit, Alcoholic Beverage Control License, or any other regulations, provisions, or restrictions prescribed by a regulatory authority with jurisdiction over the premise; at all times. Violations of any law or conditions of the Conditional Use Permit will be considered a violation of this permit under § 5.44.015(c) of the Huntington Beach Municipal Code.

Per section 5.44.090 HBMC, the Chief of Police may, revoke or suspend the permit upon receiving satisfactory evidence that the licensee or permittee has received four administrative citations which have been upheld at an administrative hearing, or been convicted of, or has entered a plea of guilty to four violations of the provisions of this chapter, or of any other law or ordinance of the City or state relating to such business.

Issued: December 9, 2010


Kenneth W. Small (ACTING C.O.P.)
Chief of Police

ATTACHMENT NO. 3

**BEFORE THE
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
OF THE STATE OF CALIFORNIA**

In the Matter of the Application of:

HENRY & PHILIP CORPORATION
DBA: Diggs Restaurant
8052 Adams Ave
Huntington Beach, CA 92648

File: 47-500159

**PETITION FOR
CONDITIONAL
LICENSE**

For issuance of an On Sale General Eating Place License

Under the Alcoholic Beverage Control Act

WHEREAS, petitioner(s) has/have filed an application for the issuance of the above-referred-to license(s) for the above-mentioned premises; and,

WHEREAS, the local policing agency has expressed an objection to the issuance of the applied-for license without the below-listed conditions; and,

WHEREAS, the undersigned applicant(s) is/are desirous to allay the policing agency's concerns; and,

WHEREAS, the issuance of an unrestricted license would be contrary to public welfare or morals;

NOW THEREFORE, the undersigned petitioner(s) do/does hereby petition for a conditional license as follows, to-wit:

01. Sales, service and consumption of alcoholic beverages shall be permitted only between the hours of 10:00 a.m. and 12:00 midnight Sunday through Thursday and 10:00 a.m. and 2:00 a.m. Friday and Saturday.
02. Sales, service and consumption of alcoholic beverages shall be permitted in the patio area only between the hours 10:00 a.m. and 12:00 midnight each day of the week.
03. The sale of alcoholic beverages for consumption off the premises is strictly prohibited.
04. Food service with an available menu shall be available up until ½ hour before closing each day of the week.
05. Food service with an available menu shall be available until 12:00 midnight on the north/west patio each day of the week.
06. Entertainment provided shall not be audible beyond the area under the control of the licensee(s) as defined on the ABC-257 dated 06-14-2010.

Initial(s): YCC

ABC-172 (2/00)

ATTACHMENT NO. 4.1

47-500159

HENRY & PHILIP CORPORATION

Page 2

07. The quarterly gross sales of alcoholic beverages shall not exceed the gross sales of food during the same period. The licensee shall at all times maintain records which reflect separately the gross sale of food and the gross sales of alcoholic beverages of the licensed business. Said records shall be kept no less frequently than on a quarterly basis and shall be made available to the Department on demand
08. There shall be no exterior advertising or sign of any kind or type, including advertising directed to the exterior from within, promoting or indicating the availability of alcoholic beverages. Interior displays of alcoholic beverages or signs which are clearly visible to the exterior shall constitute a violation of this condition.
09. There will be no dancing allowed on the premises.
10. No "happy hour" type of reduced price alcoholic beverage promotion shall be allowed after 7:00 p.m. each day of the week.
11. Petitioner(s) shall not require an admission charge or a cover charge, nor shall there be a requirement to purchase a minimum number of drinks.

This petition for conditional license is made pursuant to the provisions of Sections 23800 through 23805 of the Business and Professions Code and will be carried forward in any transfer at the applicant-premises.

Petitioner(s) agree(s) to retain a copy of this petition on the premises at all times and will be prepared to produce it immediately upon the request of any peace officer.

The petitioner(s) understand(s) that any violation of the foregoing condition(s) shall be grounds for the suspension or revocation of the license(s).

DATED THIS 2nd DAY OF September, 2010


Applicant/Petitioner_____
Applicant/Petitioner



CITY OF HUNTINGTON BEACH

2000 MAIN STREET
P. O. BOX 70

POLICE DEPARTMENT

CALIFORNIA 92648
Tel: (714) 960-8811

KENNETH W. SMALL
Chief of Police

May 05, 2011

DIGGS
8052 Adams Ave.
Huntington Beach, CA 92648
Attn: Mr. Chung

On Saturday, March 19, 2011 at 9:41 PM, officers of the Huntington Beach Police Department (HBPD) conducted an inspection of DIGGS restaurant. During the inspection, officers determined three security guards did not possess a valid guard card. Per your Entertainment Permit a minimum of two security guards are required during times of entertainment and all security guards must possess a valid guard card.

Condition number 13 of your current Entertainment Permit states, "All security guards must be clearly identifiable as security guards and possess a valid California Guard Card."

The violation of your Entertainment Permit has been documented under HBPD report #2011-004387.

This violation constitutes the first violation of your Entertainment Permit within the past twelve months. Enclosed you will find a civil citation (#1013028) for violating §5.44.015(c) of the Huntington Beach Municipal Code (HBMC). The fine for this violation is \$500.00.

The fine schedule for violations of Chapter 5.44 of the Huntington Beach Municipal code is: 1st violation - \$500 fine, 2nd violation - \$1000 fine plus 5 day suspension of entertainment permit, 3rd violation - \$1000 fine plus 15 day suspension of entertainment permit.

A copy of this report has been forwarded to the ABC for further investigation.

Instructions for paying the fine or appealing the citation are listed on the backside of the citation. If you have any questions, please contact Detective Kesler or Detective Fong at (714) 536-5960.

Sincerely,


Kenneth W. Small
Chief of Police



CITY OF HUNTINGTON BEACH

2000 MAIN STREET
P. O. BOX 70

POLICE DEPARTMENT

CALIFORNIA 92648

Tel: (714) 960-8811

KENNETH W. SMALL
Chief of Police

May 10, 2011

DIGGS
8052 Adams Ave.
Huntington Beach, CA 92648
Attn: Mr. Chung

On Saturday, April 2, 2011 at 10:05 PM, officers of the Huntington Beach Police Department (HBPd) conducted an inspection of DIGGS restaurant. During the inspection, officers determined no security was present during a live entertainment event. Per your entertainment a minimum of two security guards are required during times of entertainment.

Condition number 12 of your current Entertainment Permit states, "Security Guards: At least two when entertainment is present. One guard shall be designated to monitor the parking lot from 7:00 PM until one half hour after closing when entertainment is present."

The violation of your Entertainment Permit has been documented under HBPd report #2011-005181.

This violation constitutes the second violation of your Entertainment Permit within the past twelve months. The first violation occurred on March 19, 2011 (HBPd report #2011-004387, Civil Citation #1013028), where you were cited for §5.44.015(c) HBMC, after an investigation revealed three of your security guards did not have valid guard cards.

Enclosed you will find a civil citation (#1013029) for violating §5.44.015(c) of the Huntington Beach Municipal Code (HBMC). The fine for this violation is \$1000.00 and a 5 day suspension of your entertainment permit. You are requested to contact the Vice Unit at the below listed number to determine your suspension dates.

The fine schedule for violations of Chapter 5.44 of the Huntington Beach Municipal code is: 1st violation - \$500 fine, 2nd violation - \$1000 fine plus 5 day suspension of entertainment permit, 3rd violation - \$1000 fine plus 15 day suspension of entertainment permit.

A copy of this report has been forwarded to the ABC for further investigation.

Instructions for paying the fine or appealing the citation are listed on the backside of the citation. If you have any questions, please contact Detective Kesler or Detective Fong at (714) 536-5960.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Small', with a stylized, cursive script.

Kenneth W. Small
Chief of Police

Arabe, Jill

From: Kesler, Kevin
Sent: Wednesday, June 15, 2011 7:46 PM
To: Arabe, Jill
Cc: Fong, Steven
Subject: DIGGS Update
Attachments: DIGGS Violation Letter 3 19 2011 Signed.pdf; DIGGS Violation Letter 4 02 2011 Signed.pdf

Jill,

Enclosed are the two letters sent to DIGGS by the PD reference their two prior violations. I have additionally summarized the third violation below. I am going to be out of the office for the next couple days so if you need anything please contact Steve Fong.

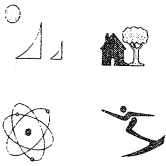
Third Violation Summary (Ref Rpt # 2011-8427)

On 5/29/11 at approximately 1:20 AM, a patrol officer noted loud music coming from DIGGS restaurant. The officer parked his vehicle in excess of 100 feet from the restaurant and could still hear loud music coming from the location, a violation of 5.44.015(A) HBMC. Based on the violation the officer decided to perform a bar check at the location. During the inspection the officer additionally noted there was no security guard on duty monitoring the parking lot, as is required per the CUP. Additionally the officer noted there were customers on the patio drinking alcohol. Per the current ABC license no service or consumption of alcohol is permitting on the patio after 12 midnight. The owner, Phil Chung, was contacted by the officer and notified of the violations. A report was taken and Vice will be issuing the location a citation.

Thanks,

Kevin

Detective Kevin Kesler
Special Investigations Bureau
Huntington Beach Police Department
(714) 536-5994



City of Huntington Beach

2000 MAIN STREET

CALIFORNIA 92648

DEPARTMENT OF PLANNING AND BUILDING

www.huntingtonbeachca.gov

Planning Division

714.536.5271

Building Division

714.536.5241

Date: June 7th, 2011
To: Jill Arabe, Assistant Planner
From: Kathy Schooley, Code Enforcement Officer
Location: Diggs Restaurant and Bar 8052 Adams Avenue

Summary of Inspection:

A six-month review of the Conditional Use Permit was performed at Digg's Restaurant and Bar located at 8052 Adams. The inspection revealed the front doors were secured open in violation of CUP 09-001 2c. No other violations were found during the review that would appear to fully justify modifying or revoking Conditional Use Permits 94-9 or 09-001.

Summary of CUP Conditions:

1. Dancing is not permitted.
2. Security guard on duty to monitor parking, trash and noise.
3. Doors shall remain closed during business hours.
4. Valet service shall not be permitted.
5. Food service from the restaurant menu must be available from opening until one-half hour prior to the scheduled closing time.

Code Enforcement Complaints:

There has been one call for service regarding noise in which the complaining party states the music is excessive on Sunday nights. Upon inspection, Code Enforcement found the doors to be open thus exasperating the noise levels. The restaurant and bar close at 9pm on Sunday.



CITY OF HUNTINGTON BEACH

2000 MAIN STREET
P.O. BOX 70

POLICE DEPARTMENT

CALIFORNIA 92648
Tel: (714) 960-8811

Kenneth W. Small
Chief of Police

Date: June 3, 2011
To: Jill Arabe, Planning Department
From: Kevin Kesler, Special Investigations Bureau Vice Unit
Subject: Police Department Six Month Review: DIGGS Restaurant
Location: 8052 Adams Avenue

Summary:

A six month review of incidents requiring police services was performed at DIGGS Restaurant, located at 8052 Adams, as required by Condition of Appeal No. 3 of CUP 09-001. No violations were found during the review that would appear to fully justify modifying or revoking the Conditional Use Permit. There was however, some very concerning behavior regarding a number of substantial potential violations which will be addressed in further detail herein. The Police Department review found no violation of conditions contained in CUP 09-001. However, conditions contained in CUP 94-9 regarding security were violated.

Summary of CUP Conditions:

DIGGS Restaurant was granted a Conditional Use Permit (09-001) authorizing service/on-site consumption of alcohol in the outdoor dining area. CUP 94-9 permits live entertainment. Provided below is a summary of the CUP conditions:

1. Dancing is prohibited.
2. Doors shall remain closed during business hours.
3. A security guard shall be on duty to monitor parking, trash and noise from 7 PM until a minimum of one-half hour after closing.

Summary of ABC Conditions:

DIGGS Restaurant was granted a type 47 ABC license (ABC License # 47-500159). Provided below is a summary of the ABC license conditions:

1. Sales, service and consumption of alcoholic beverages shall be permitted only between the hours of 10:00 AM and 12:00 midnight Sunday through Thursday and 10:00 AM and 2:00 AM Friday and Saturday.

ATTACHMENT NO. 9.1

2. There will be no dancing allowed on the premises.

Crime Analysis:

As part of the review, Vice Detectives examined calls for service, crime reports, and arrests at the above location since the location has had an active entertainment permit (11/01/2010 to Present). There have been no police calls for service at the location which were directly related to DIGGS restaurant other than the incident described below.

Vice Detectives received information regarding a private party at the location scheduled for Saturday 19 March. Promotional fliers for the event stated there would be "stripper poles" and "dance stages" at the private party. When detectives researched the website referenced on the promotional flyer (<http://plushparties.net>) it was readily apparent the private party was intended to be a sexually oriented event commonly referred to as a "swingers party". Prior to the event occurring, the owner was contacted and warned that dancing and sexually oriented business activities were not authorized with his current permit. He was told he would be in violation of his Entertainment Permit, Conditional Use Permit and the Huntington Beach Municipal Code if he allowed the event to occur. The owner agreed not to allow the activities.

During a subsequent inspection on 3/19/2011, officers noted what appeared to be a dance area located near the DJ where the furniture had been moved out of the way. Officers also noted that it appeared individuals were in the process of setting up for the event. There was lighting equipment and at least one table with a variety of sex-related devices including condoms displayed on it along with a quantity of flyers for the event promoter.

Officers additionally noted the on-site security guard did not have a State of California Guard Card, as is required per the current entertainment permit. A report was taken and citation issued under DR 2011-4387.

A follow up inspection by officers was performed on 4/2/2011. During the inspection officers noted live entertainment was being performed, however no security guards were present as is required by the Entertainment Permit. The owner was contacted and stated he told his security guards not to show up as there were not that many customers. A report was taken and citation issued under DR 2011-05181.

Vice has performed two undercover inspections at the location. No violations were noted during those inspections. During the inspections no customers were dancing, however two areas appeared to be cleared out (tables removed from the dining area floor) to allow for dancing.

Recommendation:

Based on the foregoing information, the Huntington Beach Police Department has found the public peace, safety and welfare has not been negatively impacted by the issuance of this Conditional Use Permit. It is obvious however, that had the police department been less proactive in their efforts, the business owner would have willingly violated his Conditional Use Permit, Entertainment Permit and the Huntington Beach Municipal Code even after being

cautioned against doing so. I therefore recommend the CUP be reviewed again for compliance in six months. I also recommend the responsibility of the owner to follow all the conditions imposed on the operation of his business be reiterated to him. Specifically, the CUP condition prohibiting dancing, regulations related to sexually oriented business activities and the Entertainment Permit condition requiring the use of licensed Security Staff. If any future modifications are made, it is recommended the hours listed in the ABC license (condition #1 above) for sales, service and consumption of alcohol be added to the CUP.

Browser window showing Facebook posts for Digg's Restaurant & Bar (12).

Posts include:

- Digg's Restaurant & Bar**
Happy Monday! Come relax at Digg's after work with 20% for Locals Night & mention this post to get yourself a ****FREE**** drink :) Just off Beach & Adams!
May 23 at 2:37pm · Like · Comment
Success Moses likes this.
Write a comment...
- Lindsey Gaines**
Do you have Sunday Brunch?
May 11 at 10:15pm · Like · Comment
- Digg's Restaurant & Bar**
Absolutely! It's delicious and Saturday and Sunday 10am - 2pm :)
May 12 at 11:34am · Like
Write a comment...
- Digg's Restaurant & Bar**
The night scene tonight is poppin' at Digg's!! We have a packed house and bottle service is flying off the shelves! See us next Saturday for another killer night!
May 22 at 1:08am · Like · Comment
Success Moses likes this.
Write a comment...
- Digg's Restaurant & Bar**
** Hangover Benedicts, the HB Omelet or pancakes with Redbull syrup!!
Hangover? What hangover... Digg's has brunch till 2pm; mmmm & \$10 bottomless Mimosa's or (the best) Bloody Mary's in town.
May 21 at 11:21am · Like · Comment
3 people like this.
Write a comment...
- Digg's Restaurant & Bar**
Whoooo! DJ duo Bell & Benjamin tonight! Numerous drink specials and music bumpin' 9pm till 1am!
May 20 at 6:37pm · Like · Comment
- Digg's Restaurant & Bar**
Comedy & Ladies Night :) don't miss singer Sheryl Smith from 6pm- 7pm & Happy Hour specials till 7pm!
May 18 at 3:53pm · Like · Comment
- Success Moses**
Also LADIES NIGHT! Ladies get 50% off all well drinks, house wines and domestic beers! From 7-10pm!
May 18 at 5:11pm · Like
Write a comment...

Chat (11)